

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

February 17, 2010

### **MINUTES**

#### DIVISION STAFF PRESENT:

Deanna D. Sabey, Division Director  
Dee Johnson, Enforcement Director  
Mark Fagergren, Education and Licensing Director  
Traci Gundersen, Assistant Attorney General  
Jennie Jonsson, Hearing Officer  
Renda Christensen, Board Secretary  
Tiffeni Wall, Real Estate Education Coordinator  
Toni Heldman, Real Estate Licensing  
Jill Childs, Real Estate Licensing  
Amber Nielsen, Real Estate Licensing

#### COMMISSION MEMBERS PRESENT:

Gary R. Hancock, Chair  
Kay R. Ashton, Vice Chair  
H. Blaine Walker, Commissioner  
Stefanie Tugaw-Madsen, Commissioner  
H. Thayne Houston, Commissioner

#### GUESTS:

Irene Kennedy  
Rob Ponte  
David Bornemeier  
Chad Ahearn  
Kevin Swenson

The February 17, 2010 meeting of the Utah Real Estate Commission began at 9:08 a.m. with Chair Hancock conducting.

### **PLANNING AND ADMINISTRATIVE MATTERS**

#### Approval of Minutes

The Minutes from the January 20, 2010 meeting were approved as written.

Chair Hancock mentioned an article from the Ogden Standard Examiner that was published in the Monday, March 1, 2010 edition. The lead story was about "Lot Less Misbehaving," in reference to the downturn of fraudulent activity in the Utah real estate market. Director Sabey was quoted in the article and Chair Hancock

said she did a fine job in representing the Division.

Also, in this week's Enterprise newspaper there was an article that starts off with "FBI and State Outline Top Mortgage Scams." The article claims the Division is in concert with the FBI's special agents and identified the top five mortgage scams. Chair Hancock mentioned the article might be posted on the Division's website and given to educators. Director Sabey said the article was going to be posted, and agrees with Chair Hancock that educators should have the same information.

## **DIVISION REPORTS**

### **DIRECTOR'S REPORT – Deanna Sabey**

Director Sabey reported the progress of the Division's bill, HB-275. A substitute bill was made to that bill last Friday and went before the House Business and Labor Committee. The bill was voted out of the Committee unanimously. The substitute bill had a few wording and grammar changes, and some spelling corrections. The amendments that were made were done on the Appraiser part of the statute. Also, the substitute bill puts in clearly the separate wording on the licensing for an Associate Broker license.

In 2009, Alabama had the case called Busby vs. JRHBW Realty where the court considered whether a transaction fee being charged by real estate brokers was legal under RESPA. The court held that the fee was not legal and it violated RESPA, because it was a duplicate fee to the commission fee. Director Sabey said it was interesting in how Alabama interprets the RESPA, and the language of the case brings a lot of what HUD's reasoning has been in other RESPA related cases.

In a separate article, the enforcement division talked about the safest road to take in regards to transaction fees. The safe suggestion is to justify first why the transaction fee is charged; second, why the amount charged is reasonable; and third, why the additional services were required for this particular transaction. If there is a fee above and beyond the regular commission, the public should be informed up front.

Another approach to this issue suggested by the National Association of Realtors general counsel is to put all the fees as part of the commission because then the real estate agent doesn't have to subject himself to as much scrutiny in questioning whether the transaction fee is merely a duplicate of the commission or something beyond.

The Division received a letter from Darrell Catmull, Principal Broker, concerning the demand letter a bank will issue on short sale and the disclosure of that demand letter to the lender of the buyer. He has requested this issue be discussed on the Commission's agenda. Director Sabey recommends this issue be listed on next month's agenda to discuss in detail.

Commissioner Tugaw-Madsen asked if there was something in the Division's bill

regarding Broker Price Opinions ("BPOs"). Director Sabey said the issue was tabled for now because there needs to be more discussion between the Appraiser group and realtors on exactly what BPOs are, who can do them, and who can't do them. This needs to be discussed in more detail before we can change the statute language.

#### ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in January the Division received 38 complaints; screened 15 cases; opened 8 cases; closed 17 cases; leaving the total number of cases at 100. He said there is a backlog of screenings received that will be addressed.

There are five stipulations being presented to the Commission. The respondents were given the chance to appear to answer any questions the Commission might have, and all have declined to attend. Four of the Stipulations are from Enforcement and one is from the Education side.

#### Review of Stipulations:

Pro Financial Services Inc.

Richard D. Lloyd

David S. Tolman

Patricia L. Showalter

America's Best Real Estate Distance Education

#### EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren introduced the Division's Licensing staff. Toni Heldman has been with the Division for 12 years. Ms. Heldman handles companies and all new broker applicants. Tiffeni Wall is our Real Estate Education Coordinator and has worked with Ms. Gundersen on the Stipulation presented today. She also approves all the courses for schools and writes the newsletter. Amber Nielsen and Jill Childs both have been with the Division approximately three years. These people make up the Real Estate side of the Licensing department and are in charge of new applications, renewals, and are very knowledgeable and competent employees. These employees deal with new applications for companies and individuals, all renewal applications, change cards that are not done electronically, license histories, education waivers, document scanning and archiving, and phone calls. Currently, there is no backlog which means if you turn in an application today, it will be processed today. Ms. Childs will be leaving shortly on maternity leave. Carla Westbroek, who is on the Appraisal side, recently came back from a car accident and has not been working full-time while she healed from her injuries.

Statistically our numbers for on-line renewals have dropped over time. The number of renewals that were done through RELMs last February was 80%, and in the month of January (last month) the number is now 53%. This means that approximately half of the renewals are done by paper. The reasoning is that licensees wait until the very last minute of the last month, and are hurrying to finish their CE so they can get renewed on time. Since the CE hasn't been banked yet, these licensees then bring in or fax in their renewals.

Currently there is a time gap in banking CE credits. It goes from the schools to be banked, then to Pearson Vue, and then electronically to the Division. We are in the process of looking at systems where the hours posted will be live.

Commissioner Houston said he appreciates the staff and there has been marked improvement over the last several years.

#### COMMISSION AND INDUSTRY ISSUES

##### Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said the rules that have been worked on the last several months are in the works and have been reviewed by Administration with the Department of Commerce. It looks as if the Division's bill will go through which means that the rules will be given a clean-up to make the rule numbers match up to the statute numbers so it will be more user-friendly.

As background, Ms. Jonsson brought in a draft of the mortgage rule that has been overhauled. These will be published in the bulletin on March 1, 2010 and will be out for public comment through the month of March. They will then be able to be made effective in April. She also asked the Commission to take into consideration the felony rule that was previously discussed. This would treat a plea in abeyance to a felony the same way as we treat a conviction, and to give us guidance as to any change that might be needed. A brief discussion was held and it was decided to add this item to the agenda for next month.

Commissioner Ashton brought up the issue of condominium associations. Homeowner's Associations are a big impact on both the mortgage and real estate side. Director Sabey said there is a model in Nevada that uses the Property Rights Ombudsman instead of the Division of Real Estate to deal with registration, fees, and those kinds of issues. If something were to be done in Utah, it would probably be done through the Ombudsman's office.

Commissioner Ashton said that in audits of these associations, there were challenges in having sufficient reserves for capital improvements or maintenance. It was discussed in our last meeting that Ms. Tammy Lund would write an outline, and Chair Hancock said he would follow-up with her to see her progress. Commissioner Walker said the most common problem he has seen is people not having a financial background experience, and then none of the owners want high assessments. This issue gets into the transfer fees they enact because they haven't set aside enough reserve.

Ms. Jonsson said that some of these HOA's have CCR's that allow them to encumber a home with a lien if people don't pay their dues. Very frequently you can run across a unit that has a lien on it from years back, and whoever has placed the lien on it has long gone, and whoever is now running the HOA doesn't feel like they have the authority to release the lien. She suggested imposing a time limit or

something that says that an HOA that can't establish a claim on a filed lien has to release it.

A motion was made and passed to close the public portion of the meeting at 10:05 a.m.

**LICENSE HEARINGS: CLOSED TO PUBLIC**

10:30        Scott Cole – Application for License

11:20        Joseph Henneman – Application for Renewal

A motion was made and accepted to go into Executive Session from 11:51 a.m. to 1:55 p.m.

2:00        Jonathan McGuire – Application for Renewal

A motion was made and accepted to go into Executive Session from 2:34 p.m. to 3:00 p.m.

3:00        David Anderson – Application for License

4:00        Douglas Delquadro – Application for Renewal  
              Hamid Hosseini, Principal Broker

4:40        Jay R. Rice – Application for License

A motion was made and accepted to go into Executive Session from 6:13 p.m. to 7:12 p.m.

**OPEN TO PUBLIC**

**RESULTS OF EXECUTIVE SESSION**

**Results on Stipulations:**

Pro Financial Services Inc. - Approved

Richard D. Lloyd - Approved

David S. Tolman - Approved

Patricia L. Showalter - Approved

America's Best Real Estate Distance Education - Approved

A Motion was made and accepted to adjourn the meeting at 7:13 p.m. The Motion was passed unanimously.